

BILL ANALYSIS

H.B. 3
By: Murr
Constitutional Rights & Remedies, Select
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Full, free, and fair elections are the very foundation of a stable constitutional democracy and Texas voters must have faith and confidence in the ability to exercise their right to vote in the state's elections. To fulfill that fundamental promise of democracy, it is in the interest of the state for elections to be conducted consistently and securely, protected from fraud or abuse, with the assurance that every lawful vote is counted.

H.B. 3, the Election Integrity Protection Act of 2021, seeks to provide for the uniform application of the state's election laws in a variety of ways, among them eliminating the potential for counties to create inconsistent ad hoc voting procedures, improving mail-in ballot security, providing for appropriate voting assistance to elderly and disabled voters, banning "vote harvesting," and ensuring poll watchers are allowed to observe election activities in polling places and ballot counting areas.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTION 3.07 of this bill.

ANALYSIS

General Provisions

H.B. 3 amends the Election Code to revise the conduct of elections in Texas, including with regard to election officers and observers, voting by mail, assistance of voters, fraud and other unlawful practices, and ineligible voters and related reforms and amends the Government Code to provide for the prioritization of certain election proceedings in the Texas Supreme Court, the courts of appeals, and the trial courts. The bill requires election officials and other public officials to strictly construe the provisions of the Election Code to effect the intent of the legislature that the application of those provisions and the conduct of elections be uniform and consistent throughout Texas to reduce the likelihood of fraud in the conduct of elections, protect the secrecy of the ballot, promote voter access, and ensure that all legally cast ballots are counted. The bill makes general principles of criminal responsibility under the Penal Code applicable to offenses prescribed by the Election Code. The bill sets out certain legislative findings and provides for the severability of its provisions.

Registration of Voters

H.B. 3 requires the contents of a voter registration application to be supplied by the person desiring to register to vote. The bill revises the procedures for providing notice of unlawful voting by a person who is not registered to vote to a prosecutor, and in some cases to the attorney general, by requiring a voter registrar who determines that a person who is not eligible to vote either registered to vote or voted in an election to execute and deliver to the attorney general, the secretary of state, and the county or district attorney having jurisdiction in the territory covered by the election an affidavit stating the relevant facts.

H.B. 3, with respect to the notice of change in registration information by a voter, extends to any voter, rather than only a voter who continues to reside in the county of registration, the authorization to correct information on the voter's registration certificate by digital transmission of information under a program administered by the secretary of state and the Department of Information Resources. The bill provides the following:

- if the signed notice of the incorrect information and corresponding correction indicates that a voter no longer resides in the county in which the voter is registered, the voter registrar must forward the notice and the voter's original application for registration to the registrar of the county in which the voter resides;
- the registrars must coordinate to ensure that the voter's existing registration is canceled immediately after the voter is registered in the voter's county of residence; and
- a registrar who receives a voter's notice and application from another registrar must treat it as an original application for voter registration and must register the voter if the voter resides in the county and is otherwise eligible for registration.

Conduct and Security of Elections

Election of Unopposed Candidate

H.B. 3 requires, rather than authorizes, the governing body of a political subdivision, on receipt of certification that a candidate is unopposed for election to an office, to declare by order or ordinance the unopposed candidate elected to the office. The bill requires, rather than authorizes, a certifying authority to declare an unopposed candidate elected to an office of the state or county government if, were the election held, only the votes cast for that candidate may be counted.

Countywide Polling Place Program

H.B. 3 expands the eligibility criteria for participation in the countywide polling place program to include counties that, in addition to meeting the other eligibility criteria, use ballot marking devices, hand-marked scannable paper ballots that are printed and scanned at the polling place, or any other voting system equipment the secretary of state determines is capable of processing votes for each type of ballot to be voted in the county.

Prohibition on Voting From Inside a Motor Vehicle

H.B. 3 prohibits a voter from casting a vote from inside a motor vehicle unless the voter meets the requirements for a voter unable to enter a polling place.

Spoiled Ballot Register

H.B. 3 requires the secretary of state to create and promulgate a form to be used for the register of spoiled ballots at a polling place.

Closing Polling Place

H.B. 3 requires the secretary of state to adopt rules and create a checklist or similar guidelines to assist the presiding judge of a polling place in processing forms and conducting procedures required by the Election Code at the closing of the polling place.

Regular Days and Hours for Voting

For an election in which the county clerk is the early voting clerk, H.B. 3 does the following:

- changes the regular hours for early voting by personal appearance at the main early voting polling place on a weekday by providing that, instead of being conducted on the weekdays of the early voting period during the hours that the county clerk's main business office is regularly open for business, such voting must be conducted on each weekday of the early voting period that is not a legal state holiday for a period of at least nine hours, except that voting may not be conducted earlier than 6 a.m. or later than 10 p.m.;
- changes the regular hours for early voting by personal appearance at the main early voting polling place on a Saturday or Sunday by providing that, instead of being conducted for at least 12 hours on the last Saturday of the early voting period and for at least five hours on the last Sunday of that period, such voting must be conducted on the last Saturday of that period for at least 12 hours, except that voting may not be conducted earlier than 6 a.m. or later than 10 p.m., and on the last Sunday of that period for at least six hours, except that voting may not be conducted earlier than 9 a.m. or later than 10 p.m.; and
- lowers from 100,000 to 55,000 the minimum county population threshold that triggers the requirement for a county to conduct voting during the early voting period with extended hours in a primary election and the general election for state and county officers or in a special election ordered by the governor, as applicable.

For an election in which the county clerk is not the early voting clerk, H.B. 3 does the following:

- changes from at least eight hours each weekday to at least nine hours each weekday the number of hours that voting by personal appearance at the main early voting polling place must occur in a territory covered by the election that has 1,000 or more registered voters; and
- changes from at least three hours each weekday to at least four hours each weekday the number of hours that voting by personal appearance at the main early voting polling place must occur in a territory covered by the election that has fewer than 1,000 registered voters.

For an election in which a city secretary is the early voting clerk, H.B. 3 changes the regular hours for early voting by personal appearance at the main early voting polling place by providing that, instead of being conducted on the weekdays of the early voting period during the hours that the city secretary's main business office is regularly open for business, such voting must be conducted at least nine hours each weekday of that period unless the territory covered by the election has fewer than 1,000 registered voters, in which case such voting must be conducted at least four hours each day.

H.B. 3 removes the requirement for early voting by personal appearance at the main early voting polling place in an election ordered by a city to be conducted for at least 12 hours on certain weekdays depending on the length of the early voting period.

H.B. 3 entitles a voter who has not voted before the scheduled time for closing a polling place to vote after that time if the voter is in line at the polling place by closing time. The bill requires the secretary of state to promulgate any materials and provide any training to presiding judges necessary to properly process voters under this provision.

Temporary Branch and Permanent Branch Polling Places

H.B. 3 removes the authorization for the establishment of a temporary branch polling place that is located in a movable structure with the approval of the county clerk in a primary election, the

general election for state and county officers, or a special election to fill a vacancy in the legislature or in congress.

H.B. 3 provides the following:

- an early voting polling place must be located inside, instead of at, a branch office, except that an early voting polling place may be located in another room inside the same building as the branch office regularly maintained for conducting general clerical functions of the county clerk if a suitable room is unavailable inside the branch office;
- a temporary polling place may be located inside any building, instead of in any stationary structure, and may not be located in a movable structure in the general election for state and county officers, general primary election, or runoff primary election; and
- the commissioners court of a county, in an election in which countywide polling places are used, must employ the same methodology it uses to determine the location of countywide polling places to determine the location of temporary branch polling places.

Arrangement of Voting System Ballots

H.B. 3 prohibits voting system ballots from being arranged in a manner that allows a political party's candidates to be selected in one motion or gesture.

Election Officers and Observers

Watchers and Their Purpose, Entitlements, Observations, and Duties

H.B. 3 prohibits a presiding judge from having a watcher duly accepted for service removed from the polling place for violating any provision of law relating to the conduct of elections, unless the violation was observed by an election judge or clerk after the watcher was previously warned that the watcher's conduct violated the law. However, a presiding judge may call a law enforcement officer to request that a poll watcher be removed if the poll watcher commits a breach of the peace or a violation of law.

H.B. 3 establishes that the purpose of provisions governing appointed watchers is to preserve the integrity of the ballot box in accordance with the Texas Constitution by providing for the appointment of watchers. The bill provides the following:

- it is the intent of the legislature that watchers duly accepted for service under those governing provisions be allowed to observe and report on irregularities in the conduct of any election;
- watchers may not interfere in the orderly conduct of an election; and
- to effect the applicable purpose, a watcher must:
 - observe without obstructing the conduct of an election; and
 - call to the attention of an election officer any observed or suspected irregularity or violation of law in the conduct of the election.

H.B. 3 creates a Class B misdemeanor offense for an election officer who intentionally or knowingly refuses to accept a watcher for service when acceptance of the watcher is required by law. Before accepting a watcher, an election officer presented with a watcher's certificate of appointment must require the watcher to take an oath administered by the officer that the watcher swears or affirms that the watcher will not disrupt the voting process or harass voters in the discharge of the watcher's duties.

H.B. 3 prohibits a watcher from being denied free movement where election activity is occurring within the location at which the watcher is serving, but the bill explicitly excludes from that prohibition the observation at a voting station when a voter is preparing the voter's ballot or is being assisted by a person of the voter's choice. The bill sets out a provision establishing that, in the Election Code, a watcher who is entitled to "observe" an election activity is entitled to sit or stand near enough to see and hear the activity.

H.B. 3 authorizes a watcher appointed to serve at a polling place in an election who is available at the time of the action to observe all election activities relating to closing the polling place, including the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed used by the voting system equipment. The bill provides the following:

- a watcher duly accepted for service at a polling location is entitled to follow the transfer of election materials from the polling place at which the watcher was accepted to a regional tabulating center, the central counting station, or any other location designated to process election materials; and
- the authority responsible for administering a regional tabulating center or another location where election materials are processed must do the following:
 - accept duly appointed watchers for service in the same manner a watcher is accepted for service; and
 - accept a maximum of two watchers for each precinct polling place, meeting place for an early voting ballot board, or central counting station involved in the election.

H.B. 3 revises the conduct constituting the offense for unlawfully obstructing a watcher as follows:

- to include knowingly preventing a watcher from observing an activity the person knows the watcher is entitled to observe;
- to include knowingly preventing a watcher from observing a procedure the person knows the watcher is entitled to observe; and
- to include knowingly preventing such observation of an activity or procedure by taking any action to obstruct the view of a watcher or distance the watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective.

Relief, Writs, and Remedy

H.B. 3 authorizes the appointing authority for a watcher who believes that the watcher was unlawfully prevented or obstructed from the performance of the watcher's duties and authorizes the secretary of state, if the secretary of state believes that a state inspector was unlawfully prevented or obstructed from the performance of the inspector's duties, to seek the following:

- injunctive relief under the Election Code, including the issuance of temporary orders;
- an applicable writ of mandamus under the Election Code; and
- any other remedy available under law.

Receipt of a Marked Early Voting Mail-In Ballot Delivered In Person

H.B. 3 requires an in-person delivery of a marked early voting mail-in ballot to be received by an election official at the time of delivery. The receiving official must do the following:

- record on a roster prescribed by the secretary of state the voter's name, signature, and type of identification provided for acceptance to vote; and
- attest on the roster that the delivery complies with the method for returning a marked ballot.

Public Test of Logic and Accuracy

H.B. 3 requires the general custodian of election records, if a public test of logic and accuracy of a voting system is being conducted for an election in which a county election board has been established, to notify each member of the board of the test at least 48 hours before the date of the test. If the county election board chooses to witness the test, each member of the board must sign the requisite statement providing a full and accurate account of the condition of a given voting machine. In addition, a public test of logic and accuracy of a voting system must also

require the general custodian of election records to demonstrate, using a representative sample of voting system equipment, that the source code of the equipment has not been altered.

Voting by Mail

Contents of Early Voting Ballot by Mail Application and Carrier Envelope

H.B. 3 requires an applicant's signature on an application for an early voting ballot by mail to be submitted in writing using ink on paper, prohibits the use of a photocopied signature, and clarifies that the signing of the application is subject to signing by a witness on the grounds of disability or illiteracy. The bill includes the following information among the required contents of the application for a ballot voted early by mail and the carrier envelope of the ballot:

- the voter's or applicant's driver's license number or the number of a personal identification card issued by the Department of Public Safety (DPS);
- if the voter or applicant has not been issued either number, the last four digits of the voter's or applicant's social security number; or
- a statement by the voter or applicant that the voter or applicant has not been issued any of the specified numbers.

In addition, the bill provides the following:

- a person may use the number of a driver's license or personal identification card that has expired for these purposes if the license or identification is otherwise valid; and
- no record associating an individual voter with a ballot may be created.

H.B. 3 provides for the respective spaces for entering the newly required information on the officially prescribed application form for the ballot voted early by mail and on the carrier envelope and requires the space on the carrier envelope to be hidden from view when the envelope is sealed. The bill requires the early voting clerk to reject the application if the newly required information on the application does not match the information on the applicable voter registration application. The bill provides that a ballot may be accepted only if, among other requirements for acceptance, the applicable information matches the information on the voter's application for voter registration, in which case the signature on the ballot application and on the carrier envelope are rebuttably presumed to be the signatures of the voter.

Certain Ballots Retained

H.B. 3 requires early voting mail-in ballots that were not timely returned to be retained in a locked container for the period for preserving the precinct election records.

Comparison of Voter's Signatures

H.B. 3 revises the provisions that currently authorize a signature verification committee and early voting ballot board, respectively, to compare two or more signatures of a voter made within the preceding six years that are on file with a county clerk or voter registrar for purposes of ballot acceptance. The bill authorizes the committee and board to compare the signatures instead with any known signature of the voter on file with such officials. The bill also requires an early voting ballot board, in order to determine whether the signatures on a ballot application and the carrier envelope certificate are those of the voter, to request from DPS any signature of the voter's on file with DPS and compare the signatures of the voter on the ballot application and the carrier envelope certificate with any signature provided.

Opportunity to Correct Defect of Early Voting Ballot by Mail

H.B. 3 requires a signature verification committee and early voting ballot board, not later than the second business day after discovering an applicable defect with an early voting ballot voted by mail and before deciding whether to accept or reject a timely delivered ballot, to do the following:

- return the carrier envelope to the voter by mail, if the committee or board determines that it would be possible to correct the defect and return the carrier envelope before the time the polls are required to close on election day; or
- notify the voter of the defect by telephone or email and inform the voter that the voter may do the following:
 - request to have the voter's application to vote by mail canceled; or
 - come to the early voting clerk's office in person not later than the sixth day after election day to correct the defect.

The bill establishes that the committee or board, if the respective entity takes either such action, must take the action with respect to each ballot in the election to which the opportunity to correct the defect applies. A poll watcher is entitled to observe such an action and the secretary of state may prescribe any procedures necessary to implement the correction process. The bill prohibits a ballot from being finally rejected for certain reasons regarding the carrier envelope certificate, voter signature on the certificate and ballot application, or statement of residence, before the seventh day after election day. These bill provisions regarding the opportunity to correct a defect apply only to an early voting ballot voted by mail:

- for which the voter did not sign the carrier envelope certificate;
- for which it cannot immediately be determined whether the signature on the carrier envelope certificate is that of the voter;
- missing any required statement of residence; or
- containing incomplete information with respect to a witness.

Notice of Rejected Ballot

H.B. 3 requires the early voting clerk, not later than the 30th day after election day, to deliver notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because the signature verification committee or the early voting ballot board determined that any Election Code violation occurred.

Counting Ballots and Preparing Returns

H.B. 3 requires ballots voted early by mail to be tabulated and stored separately from the ballots voted early by personal appearance and to be separately reported on the returns.

H.B. 3 requires electronic records made of early voting ballot materials and applications to record both sides of the records for provision to the early voting ballot board, the signature verification committee, or both.

Notes

H.B. 3 entitles each member of an early voting ballot board and each member of a signature verification committee to take and keep any notes reasonably necessary to perform the member's duties regarding the processing of early voting results.

Assistance of Voters

Eligibility for Assistance

H.B. 3 makes a voter eligible to receive assistance in reading a ballot if the voter cannot read the ballot because of a physical disability that renders the voter unable to write or see or because of an inability to read the language in which the ballot is written.

Submission of Form by Assistant

H.B. 3 requires a person, other than an election officer, who lawfully assists a voter to complete a form stating the following:

- the name and address of the person assisting the voter;
- the relationship to the voter of the person assisting the voter; and
- whether the person assisting the voter received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee.

The secretary of state must prescribe the form. The bill provides the following additional requirements for the form:

- the form must be incorporated into the official carrier envelope if the voter is voting an early voting ballot by mail and receives assistance; or
- the form must be submitted to an election officer at the time the voter casts a ballot if the voter is voting at a polling place or, if the voter is unable to enter the polling place, is voting at the polling place entrance or curb.

Oath Required Before Providing Assistance

H.B. 3 revises the oath required to be taken by a person selected to provide assistance to a voter by including a specification in the oath language that the person is swearing or affirming the oath under penalty of perjury and by doing the following:

- clarifying that the person required to take the oath before providing the assistance is a person other than an election officer;
- requiring the person taking the oath to swear or affirm that the voter being assisted represented that the voter is eligible to receive assistance because of a physical disability that renders the voter unable to write or see or an inability to read the language in which the ballot is written;
- requiring the person taking the oath to swear or affirm that the person will confine the assistance to reading the ballot to the voter, directing the voter to read the ballot, marking the voter's ballot, or directing the voter to mark the ballot;
- removing the requirement for the person taking the oath to swear or affirm that the person will confine the assistance to answering the voter's questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties;
- requiring the person taking the oath to swear or affirm that the person did not pressure or coerce the voter into choosing the person to provide assistance;
- requiring the person taking the oath to swear or affirm that the person will not communicate information about how the voter has voted to another person; and
- requiring the person taking the oath to swear or affirm that the person understands that if assistance is provided to a voter who is not eligible for assistance, the voter's ballot may not be counted.

Unlawfully Assisting Voter Voting Ballot by Mail

H.B. 3, with regard to the offense of unlawfully assisting a voter voting a ballot by mail, requires a person who lawfully assists a voter in preparing a ballot to be voted by mail, in addition to the statutorily required entry of the person's signature, printed name, and residence address on the official carrier envelope of the voter, to also enter the following information on the envelope:

- the relationship of the person providing the assistance to the voter; and
- whether the person received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee in exchange for providing assistance.

Under current law, it is a state jail felony offense, with a penalty enhancement in certain circumstances, for a person who assists a voter in preparing a ballot to be voted by mail to knowingly:

- fail to sign the required written oath that is part of the certificate of the official carrier envelope of the ballot; or
- fail to enter the required information on the official carrier envelope.

Current law provides an exemption from the application of both elements of this offense if the person providing the assistance is related to the voter within the second degree by affinity or the third degree by consanguinity or was physically living in the same dwelling as the voter at the time of the event.

H.B. 3 provides a new exemption from the application of both elements of this offense if the voter is a person with a disability being assisted by a previously known attendant or caregiver.

With regard to the element of the offense of knowingly failing to enter the required information on the official carrier envelope, H.B. 3 eliminates:

- the current exemption from applicability of this offense for such a person who was physically living in the same dwelling as the voter at the time of the event; and
- the current penalty enhancement, in certain circumstances, for this conduct.

Unlawful Compensation for Assisting Voters

H.B. 3 changes the offense for unlawful compensation for assisting voters and the punishment for that offense by doing the following:

- removing the following as conduct constituting the offense:
 - compensating another person for assisting voters, as part of any performance-based compensation scheme based on the number of voters assisted or in which another person is presented with a quota of voters to be assisted;
 - engaging in another practice that causes another person's compensation from or employment status with the person to be dependent on the number of voters assisted; and
 - accepting compensation for either of those activities with knowledge that accepting compensation for such activity is illegal;
- providing that the following conduct instead constitutes the offense:
 - compensating or offering to compensate another person for unlawfully assisting voters; or
 - soliciting, receiving, or accepting compensation for unlawfully assisting voters;
- repealing the misdemeanor punishment for the offense and removing the penalty enhancement for two or more previous convictions of the offense;
- making the penalty for the revised offense a state jail felony without regard to the number of previous convictions; and
- revising the definition of compensation for purposes of the offense to provide that the term means an economic benefit as defined by a specified Penal Code provision.

The bill exempts from application of the offense a person assisting a voter who is an attendant or caregiver previously known to the voter.

Official Carrier Envelope for Early Voting Ballot

H.B. 3 requires an official carrier envelope for an early voting ballot to contain spaces on the reverse side of the envelope for indicating the relationship to the voter of a person other than the voter who deposits the carrier envelope in the mail or with a common or contract carrier.

Fraud and Other Unlawful Practices

Verifying False Information in an Affidavit

H.B. 3 creates a state jail felony offense for an election judge who knowingly provides a voter with a form for an affidavit to verify the voter's identity for the purpose of being accepted for voting if the form contains false information the judge entered on the form knowing it was false.

Unlawfully Prohibiting an Employee From Voting

H.B. 3 expands the conduct that constitutes the offense of unlawfully prohibiting an employee from voting to include the following:

- knowingly refusing to permit an employee to be absent from work to vote early in person; and
- knowingly subjecting or threatening to subject the employee to a penalty for such an absence.

The bill exempts from application of the offense a person whose conduct occurs in connection with an election in which the polls are open while early voting is in progress for voting for two consecutive hours outside of the voter's working hours.

Election Fraud

H.B. 3 does the following with respect to the offense of election fraud:

- revises the constituent conduct of an offense of election fraud involving any knowing or intentional effort to influence the independent exercise of the vote of another in the presence of the ballot or during the voting process to include the following as such constituent conduct:
 - altering the ballot of another; or
 - otherwise causing a ballot to not reflect the intent of the voter;
- expands the conduct constituting the offense of election fraud to include knowingly or intentionally making any effort to do the following:
 - prevent a voter from casting a legal ballot in an election in which the voter is eligible to vote; or
 - provide false information to a voter with the intent of preventing the voter from voting in an election in which the voter is eligible to vote; and
- enhances the penalty for the offense from a Class A misdemeanor to a state jail felony if the person committed the offense while acting in the person's official capacity as an election officer.

Vote Harvesting

H.B. 3 creates the third degree felony offense of vote harvesting for a person who does the following:

- directly or through a third party, knowingly provides or offers to provide vote harvesting services in exchange for compensation or other benefit;
- directly or through a third party, knowingly provides or offers to provide compensation or other benefit to another person in exchange for vote harvesting services; or
- knowingly collects or possesses a mail ballot or official carrier envelope in connection with vote harvesting services.

The bill exempts from application of the offense the following:

- an activity not performed in exchange for compensation or a benefit;
- interactions that do not occur in the presence of the ballot or during the voting process;
- interactions that are not conducted in-person with a voter; or
- activity that is not designed to deliver votes for or against a specific candidate or measure.

For purposes of the offense, the bill defines "benefit" by reference to the Penal Code to mean anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested and defines "vote harvesting services" to mean in-person interaction with one or more voters, in the presence of the ballot or during the voting process, intended to deliver votes for a specific candidate or measure. The bill further specifies the following:

- if conduct constituting the offense also constitutes another offense, the actor may be prosecuted for either offense or both offenses; and

- records necessary to investigate the offense or any other Election Code offense must be provided by an election officer in an unredacted form to a law enforcement officer upon request and are not subject to public disclosure.

Unlawful Solicitation and Distribution of Application to Vote by Mail

H.B. 3 creates a state jail felony offense for a public official who knowingly, while acting in an official capacity, does the following:

- solicits the submission of an application to vote by mail from a person who did not request an application;
- distributes an application to vote by mail to a person who did not request the application, unless the distribution is expressly authorized by the Election Code or access was provided to an application to vote by mail from a publicly accessible website;
- authorizes or approves the expenditure of public funds to facilitate third-party distribution of an application to vote by mail to a person who did not request the application; or
- completes any portion of an application to vote by mail and distributes the application to an applicant unless the public official engaged in the conduct while lawfully assisting the applicant.

The bill exempts from application of the offense a public official who provided general information about voting by mail, the vote by mail process, or the timelines associated with voting to a person or the public or who engaged in the applicable conduct while acting in the official's capacity as a candidate for a public office. The bill also establishes the following:

- a remedy provided under the Election Code with regard to provisions establishing certain miscellaneous offenses is cumulative and does not restrict any other remedies provided by the Election Code or by law; and
- a violation for the unlawful solicitation and distribution of an application to vote by mail is subject to injunctive relief or mandamus as provided by the Election Code.

Unlawful Distribution of Early Voting Ballots and Balloting Materials

H.B. 3 creates a Class A misdemeanor offense for an early voting clerk or other election official who knowingly mails or otherwise provides an early voting ballot by mail or other early voting by mail ballot materials to a person who the clerk or official knows did not submit an application for the ballot.

Perjury in Connection with Certain Election Procedures

H.B. 3 creates a state jail felony offense for a person who makes a false statement or swears to the truth of a false statement previously made while making the oath required of a person selected to provide assistance to a voter.

Unlawful Altering of Election Procedures

H.B. 3 prohibits a public official from creating, altering, modifying, waiving, or suspending any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by the Election Code.

Enforcement

Prioritizing Certain Election Proceedings

H.B. 3 amends the Government Code to establish procedures regarding the prioritization of certain election proceedings. The bill requires the Texas Supreme Court or a court of appeals to prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief or for a writ of mandamus under Election Code provisions governing criminal

investigations and other enforcement proceedings pending or filed in the court on or after the 70th day before a general or special election. The bill requires a trial court to make the same prioritization, except for a criminal case in which the death penalty has been or may be assessed or when it would otherwise interfere with a constitutional right. The bill provides for hearings and oral arguments in prioritized elections proceedings to be held or given in person or through electronic means.

Assignment and Docketing of Prioritized Election Proceedings; Related Criminal Offenses

H.B. 3 requires a prioritized election proceeding filed in a court of appeals to be docketed by the clerk of the court and assigned to a panel of three justices determined using an automated assignment system. The bill creates a Class A misdemeanor for a person, including a public official as defined by the bill for purposes of this provision, who communicates with a court clerk with the intention of influencing or attempting to influence the composition of a three-justice panel.

H.B. 3 requires the clerk of a district court in which a prioritized election proceeding is filed and the clerk of a county court or statutory county court in which such a proceeding is filed to respectively docket the proceeding and, if more than one applicable court in the county has jurisdiction over the proceeding, randomly assign the proceeding to an applicable court using an automated assignment system.

H.B. 3 creates a Class A misdemeanor for a person, including a public official, who communicates with a county or district clerk with the intention of influencing or attempting to influence the court or judge assigned to such a proceeding. The bill enhances the penalty to a state jail felony if it is shown on the trial of the offense that the person committed the offense while acting in the person's official capacity as an election official. A person may seek from the Texas Supreme Court or a court of appeals a writ of mandamus to compel compliance if a district or county clerk does not comply with these provisions requiring the assignment of such a proceeding.

Deadlines in Prioritized Election Proceedings

H.B. 3 requires a judge of a county court or statutory county court to whom a prioritized election proceeding is assigned who wishes to be recused from the proceeding to do the following not later than 24 hours after the proceeding is filed:

- hear an application for any emergency temporary relief sought;
- grant or deny any emergency temporary relief sought; and
- set a scheduling order that provides the following:
 - a date for a hearing on any injunction sought not later than five days after the date on which the proceeding was filed; and
 - discovery and deposition deadlines before the expiration of any emergency relief order entered.

The bill requires the presiding judge of an administrative region to assign a new judge to the proceeding not later than 12 hours after the original judge is recused. The bill requires a final order in an injunction proceeding to be submitted in writing to the parties not later than 24 hours after the judge makes a final determination in the proceeding. A person may seek from the Texas Supreme Court, the court of criminal appeals, or a court of appeals a writ of mandamus to compel compliance if a district judge does not comply with these provisions setting deadlines in certain election proceedings. In addition, a proceeding relating to a permanent injunction being sought in connection to a challenge of an application for a place on the ballot may be heard after the primary election has been canvassed.

Ineligible Voters and Related Reforms

H.B. 3 amends the Code of Criminal Procedure to require a court, after a defendant is adjudged guilty of a felony offense, to make an affirmative finding that the person has been found guilty,

enter the finding in the judgment of the case, and instruct the defendant regarding how the felony conviction will impact the defendant's right to vote in Texas. The bill requires an applicable judgment to reflect that affirmative finding and instruction.

H.B. 3 amends the Election Code to expand the conduct constituting the offense of illegal voting to include knowingly voting or attempting to vote in an election in Texas after voting in another state in an election in which a federal office appears on the ballot and the election day for both states is the same day. The bill provides the following:

- a person may not be convicted of illegal voting solely upon the fact that the person signed a provisional ballot affidavit unless corroborated by other evidence that the person knowingly committed the offense;
- this prohibition applies to an illegal voting offense committed before, on, or after the bill's effective date, except that a final conviction for the offense that exists on the bill's effective date remains unaffected; and
- if conduct constituting the offense of illegal voting, as expanded by the bill, also constitutes another offense under any other law, the actor may be prosecuted for either offense or both offenses.

Repealed Provisions

H.B. 3 repeals the following provisions of the Election Code:

- Section 85.062(e); and
- Section 86.0105(b).

Transition Provisions

H.B. 3 does the following with respect to the changes to the law made by its provisions:

- except as otherwise provided by the bill, limits the application of its changes only to an offense committed on or after the bill's effective date. The bill provides that an offense committed before the bill's effective date is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. The bill provides that an offense was committed before the bill's effective date if any element of the offense occurred before that date;
- limits the application of its changes only to an election ordered on or after the bill's effective date. The bill provides that an election ordered before the bill's effective date is governed by the law in effect when the election was ordered, and the former law is continued in effect for that purpose;
- limits the application of its changes only to an application to vote an early voting ballot by mail submitted on or after the bill's effective date. The bill provides that an application to vote an early voting ballot by mail submitted before the bill's effective date is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose; and
- limits the application of its changes only to an application for voter registration submitted on or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, on the 91st day after the last day of the legislative session.